

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 03-10945
.
FLEMING COMPANIES, INC., . 824 Market Street
et al., . Wilmington, DE 19801
.
Debtor, . August 4, 2003
..... 11:45 a.m.

TRANSCRIPT OF MOTIONS
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Pachulski, Stang, Ziehl, Young, Jones
& Weintraub, P.C.
By: LAURA DAVIS JONES, ESQ.
CHRISTOPHER J. LHULIER, ESQ.
JAMES I. STANG, ESQ.
919 North Market Street, 16th Floor
Wilmington, DE 19899

For Farris, et al.: Werb & Sullivan
By: DUANE D. WERB, ESQ.
Tenth Floor, 300 Delaware Ave.
Wilmington, DE 19899

For Sunkist: Whiteman, Bankes & Chebot, LLC
By: JEFFREY M. CHEBOT, ESQ.
325 Chestnut Street, Suite 1300
Philadelphia, PA 19106

For Reliant Energy: Jackson Walker, LLP
By: KIRK A. KENNEDY, ESQ.
1401 McKinney, Suite 1900
Houston, TX 77010

Audio Operator: Jennifer M. Patone

Proceedings recorded by electronic sound
recording, transcript produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609) 586-2311

Fax No. (609) 587-3599

APPEARANCES: (continued)

For the Trustee: U.S. Department of the Trustee
By: JOSEPH McMAHON

For Hometown Grocery: MICHAEL P. MORTON, P.A.
1203 North Orange Street
Wilmington, DE 19801

For XL Specialty Insur.: RICHARD W. RILEY, ESQ.
1100 North Market Street, Suite 1200
Wilmington, DE 19801

For Save Mart Supermarkets
and Cousins Supermarkets: Blank Rome, LLP
By: MARK J. PACKEL, ESQ.
1201 Market Street, Suite 800
Wilmington, DE 19801

For GES, Inc.: Bryan Cave, LLP
By: MARK S. LICHTENSTEIN, ESQ.
1290 Avenue of the Americas
New York, NY 10104

Morris, Nichols, Arsht & Tunnell
By: GREGORY W. WERKHEISER, ESQ.
1201 North Market Street, Box 1347
Wilmington, DE 19899

For McCormick & Co., Inc.
Mojave Foods Corp.,: Piper Rudnick, LLP
By: DANIEL J. CARRIGAN, ESQ.
1775 Wiehle Avenue, Suite 400
Reston, VA 20190

For Sandelman Landlords
Cardina Capital Partners: Zuckerman Spaeder, LLP
By: THOMAS G. MACAULEY, ESQ.
919 Market Street, Suite 1705
Wilmington, DE 19899

For Price Choppers: Morris, James, Hitchens & Williams LLP
By: CARL N. KUNZ, III, ESQ.
PNC Bank Center, 222 Delaware Avenue
Wilmington, DE 19899

For Ralphs Grocery Co.: Fulbright & Jaworski, LLP
By: DAVID A. ROSENZWEIG, ESQ.
666 Fifth Avenue, 31st Floor
New York, NY 10103

APPEARANCES: (continued)

For IBM Credit, LLC:

Stevens & Lee
By: THOMAS G. WHALEN, JR., ESQ.
BETH STERN FLEMING, ESQ.
MARNIE E. SIMON, ESQ.
FRANK C. SABATINO, ESQ.
300 Delaware Avenue, Suite 800
Wilmington, DE 19801

For Frio Valley Farms,
Dave's Market:

Campbell & Levine, LLC
By: AILEEN F. MAGUIRE, ESQ.
800 N. King Street Suite 200
Wilmington, DE 19801

For Big 8, Strickland:

Campbell & Levine
By: MARK T. HURFORD, ESQ.
800 N. King Street, Suite 200
Wilmington, DE 19801

For Clemens Markets, Inc.,
Britantine Supermarket,
Inc.

Fox Rothschild, LLP
By: MICHAEL J. VISCOUNT, JR., ESQ.
SHELDON K. RENNIE, ESQ.
1301 Atlantic Avenue, Suite 400
Atlantic City, NJ 08401

For DDB:

Phillips, Goldman & Spence, P.A.
By: JOHN C. PHILLIPS, JR., ESQ.
1200 North Broom Street
Wilmington, DE 19806

For B&R Stores:

Ballard, Spahr, Andrews & Ingersoll
By: WILLIAM M. KELLEHER, ESQ.
919 North Market Street
Wilmington, DE 19801

For Renco:

Schnader Harrison Segal & Lewis LLP
By: NICHOLAS J. LePORE, III, ESQ.
Suite 3600, 1600 Market Street
Philadelphia, PA 19103

For XL Specialty:

Manier & Herod
By: MICHAEL E. COLLINS, ESQ.
THOMAS T. PENNINGTON, ESQ.
One Nashville Place
Suite 2200, 150 Fourth Avenue North
Nashville, TN 37219

APPPEARANCES: (continued)

For CHEP, Jubilee:

Reed Smith, LLP
By: RICHARD A. KEULER, JR., ESQ.
1201 Market Street, Suite 1500
Wilmington, DE 19801

Akerman Senterfitt
By: W. GLENN JENSEN, ESQ.
255 South Orange Avenue, Citrus Center
Orlando, FL 32802

For Kraft Foods, NA,
IGA and IGA USA:

Piper Rudnick, LLP
By: MARIA ELLENA CHAVEZ-RUARK, ESQ.
6225 Smith Avenue
Baltimore, MD 21209

For Ralph's Grocery,
The Kroger Co.:

Ashby & Geddes
By: JOSEPH CLEMENT HANDLON, ESQ.
222 Delaware Avenue, 17th Floor
Wilmington, DE 19899

For Various Objectants:

Jaspan, Schlesinger, Hoffman, LLP
By: DMITRY PILIPIS, ESQ.
1201 N. Orange Street, Suite 1001
Wilmington, DE 19801

For the Committee:

Pepper Hamilton, LLP
By: DAVID FOURNIER, ESQ.
WILLIAM COHEN, ESQ.
1201 Market Street, Suite 1600
Wilmington, DE 19899

Milbank, Tweed Hadley & McCloy, LLP
By: DENNIS F. DUNNE, ESQ.
LENA MANDEL, ESQ.
1 Chase Manhattan Plaza
New York, NY 10005

For Kraft Foods, Int'l,
Kenosh Associated IGA:

DAVID L. FINGER, ESQ.
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE 19801

APPEARANCES: (continued)

For Village Elm Grove: Cross & Associates, LLC
By: AMY EVANS, ESQ.
913 North Market Street, Suite 1001
Wilmington, DE 19801

For Associated Wholesale
Grocers: MARGARET M. MANNING, ESQ.
1300 North Broom Street
Wilmington, DE 19899

For Associated Wholesale
Grocers, AWO Acquisitions,
LLC Del Investments,
Shield: Husch & Eppenberger, LLC
By: MARK T. BENEDICT, ESQ.
1200 Main, Suite 1700
Kansas City, MI 64105

Blackwell, Sanders, Peper Martin, LLP
By: JAMES M. ASH, ESQ.
Two Pershing Square
2300 Main Street, Suite 1000
Kansas City, MI 64108

For Dallas County et al: Ferry, Joseph & Pearce, P.A.
By: THEODORE J. TACCONELLI, ESQ.
824 Market Stsreet, Suite 904
Wilmington, DE 19899

For Level Food, Inc.: Ferry, Joseph & Pearce, P.A.
By: RICK S. MILLER, ESQ.
824 Market Stsreet, Suite 904
Wilmington, DE 19899

For Manogistics: Potter, Anderson & Corroon, LLP
By: LAURIE SELBER SILVERSTEIN, ESQ.
Hercules Plazla, 1313 N. Market Street
Wilmington, DE 19899

For Albertson's Inc.: Richards, Layton & Finger, P.A.
By: KIMBERLY NEWMARCH, ESQ.
One Rodney Square
920 N. King Street
Wilmington, DE 19899

APPEARANCES: (continued)

For Dell Financial:	Seitz, Van Ogtrop & Green, P.A. By: KEVIN A. GUERKE, ESQ. 222 Delaware Avenue, Suite 1500 Wilmington, DE 19899
For	Stevens & Lee By: JOSEPH GREY, ESQ. 300 Delaware Avenue, Suite 800 Wilmington, DE 19801
For Quine & Associates, Inc.:	The Bayard Firm By: ERIC M. SUTTY, ESQ. 222 Delaware Avenue, Suite 900 Wilmington, DE 19899
For MAC Enterprises/ WSP Int'l:	The Bayard Firm By: CHRISTOPHER P. SIMON, ESQ. 222 Delaware Avenue, Suite 900 Wilmington, DE 19899
For Hoda, LLC:	Ferry, Joseph & Pearce, P.A. By: JOHN D. MATTEY, ESQ. 824 Market Street, Suite 904 Wilmington, DE 19899
For Picksweet:	Elzufon Austin Reardon Tarlov & Mondell, P.A. By: WILLIAM D. SULLIVAN, ESQ. CHARLES J. BROWN, III, ESQ. 300 Delaware Avenue, Suite 1700 Wilmington, DE 19899
For Manogistics, Inc.:	Arent Fox Kintner Plotkin & Kahn, PLLC By: MARY JOANNE DOWD, ESQ. 1050 Connecticut Avenue, N.W. Washington, D.C. 20036
For Planview:	Ashby & Geddes By: RICARDO PALACIO, ESQ. 222 Delaware Avenue, 17th Floor Wilmington, DE 19899
For ACE:	White and Williams, LLP By: MARC STEPHEN CASARINO, ESQ. 824 North Market Street, Suite 902 Wilmington, DE 19801

APPEARANCES: (continued)

For Performance Contracting

GE Capital: Werb & Sullivan
By: AMY D. BROWN, ESQ.
Tenth Floor, 300 Delaware Avenue
Wilmington, DE 19899

For Bank Bolivar, EFS Nat.

Bank, Provenzano: Weir & Partners, LLP
By: KENNETH E. AARON, ESQ.
824 Market Street, Suite 1001
Wilmington, DE 19899

For Quillens, VSC, CPW: Tybout, Redfearn & Pell
By: SHERRY RUGGIERO FALLON, ESQ.
Suite 1100, 300 Delaware Avenue
Wilmington, DE 19899

For W C Koch and
Transamerica:

Connolly Bove Lodge & Hutz, LLP
By: MICHELLE McMAHON, ESQ.
1220 Market Street
Wilmington, DE 19899

For Miners, Cousins 3: Blank Rome, LLP
By: BONNIE GLANTZ FATELL, ESQ.
1201 Market Street, Suite 800
Wilmington, DE 19801

For Skogen & Hergenbath: Foley & Lardner
By: RODERICK B. WILLIAMS, ESQ.
Washington Harbour, Suite 500
3000 K Street N.W.
Washington, D.C. 20007

Smith, Katzenstein & Furlow, LLP
By: KATHLEEN M. MILLER, ESQ.
800 Delaware Avenue
Wilmington, DE 19899

For Sandelman Landlords: Dickstein Shapiro Morin & Oshinsky LLP
By: JEFFREY RHODES, ESQ.
2101 L Street, N.W.
Washington, D.C. 20037

For Borrus & Weatherford: Lyons, Doughty & Veldhuis, P.C.
By: HILLARY VELDHUIS, ESQ.
1288 Route 73, Suite 310
Mount Laurel, NJ 08054

APPEARANCES: (continued)

For New Plan Gibbstown: Ballard Spahr Andrews & Ingersoll, LLP
By: JEFFREY MEYERS, ESQ.
1735 Market Street, 51st Floor
Philadelphia, PA 19103

For Associated
Wholesale: Buchanan, Ingersoll, P.C.
By: SELINDA A. MELNIK, ESQ.
Eleven Penn Center, 1835 Market Street
Philadelphia, PA 19103

For C&S Wholesale Grocers
and C&S Acquisition: RICHARD COBB, ESQ.

Simpson Thacher & Bartlett LLP
By: KENNETH S. ZIMAN, ESQ.
425 Lexington Avenue
New York, NY 10017

For Debtors: Kirkland & Ellis, LLP
By: RICHARD L. WYNNE, ESQ.
ANDREW R. RUNNING, ESQ.
ERIC LIEBELER, ESQ.
777 South Figueroa Street
Los Angeles, CA 90017

For Agents: Greenberg Traurig, LLP
By: WILLIAM E. CHIPMAN, JR., ESQ.
The Brandywine Bldg. 1000 West Street
Wilmington DE 19801

White & Case
By: ANDREW P. DeNATALE, ESQ.
DANIEL P. GINSBERG, ESQ.
1155 Avenue of the Americas
New York, NY 10036

For Hayes Foodtown,
Marvin Entities: Monzack & Monaco, P.A.
By: RACHEL B. MERSKY, ESQ.
400 Commerce Center, 12th & Orange Sts.
Wilmington, DE 19899

APPEARANCES: (continued)

For 28 Retail Merchants: Finkel Goldstein Berzow Rosenbloom &
Nash, LLP

By: NEAL M. ROSENBLOOM, ESQ.
HARVEY L. GOLDSTEIN, ESQ.

26 Broadway
New York, NY 10004

For International

Brotherhood of Teamsters:Previant, Goldberg, Uelmen, Gratz,
Miller & Brueggeman, S.C.

By: FREDERICK PERILLO, ESQ.
Milwaukee, WI

VIRGINIA E. NEISWENDER, ESQ.
1900 K. Street, N.W.
Washington, D.C. 20006

For Sterker Food Corp.,
Davis Burkett Food,
German Foods:

Morris, James, Hitchens & Williams
By: STEPHEN M. MILLER, ESQ.
222 Delaware Avenue, 10th Floor
Wilmington, DE 19899

1 Counsel's going to come back.

2 MR. PENNINGTON: Okay, fine. That works.

3 THE COURT: All right. Any other objection?

4 MR. HOGAN: Your Honor, this is Timothy Hogan from
5 Wayne Berry. If I may, Your Honor, I'm not certain if the
6 Court ever received our objection that was timely filed. It
7 was 2664?

8 THE COURT: I'm not sure I have, either, so you
9 better re-articulate it.

10 MR. HOGAN: Wayne Berry was a software developer,
11 developed software that Fleming has used in the Hawaii
12 division, at least in Hawaii for sure, since 1999 under a non-
13 exclusive limited license. I went to trial against Fleming and
14 got a jury verdict in March, March 6th of this year, Your
15 Honor, finding Fleming as a wilful infringer for making
16 derivative copies of the software.

17 Fleming has continued to use Mr. Berry's software.
18 There's a dispute as to which version is being used, but has
19 used it and is continuing to use what is claimed to be a new
20 software package made by the same individual who the jury found
21 had infringed.

22 My concern is that Mr. Berry is going to have to
23 pursue the new -- the buyer under a -- the claim of
24 infringement again. If there's any thought that Mr. Berry's
25 software is passing in this agreement I'd at least like

1 something in the record, Your Honor, that would at least
2 indicate they've not chosen to even schedule this software,
3 they have not chosen to assume it or to assign it, and that
4 whatever the buyer gets the buyer will get subject to Mr.
5 Berry's copyright.

6 THE COURT: Well --

7 MR. HOGAN: If any.

8 THE COURT: Let me hear from the debtor and buyer on
9 that issue.

10 MR. LIEBELER: We're not using the software. I mean
11 --

12 THE COURT: Who cares if you're using it. Are you
13 selling it to the buyer?

14 MR. ZIMAN: Your Honor, I do not believe that this
15 software license is on any list to be assumed and assigned, and
16 if -- to the extent that we can't assume it and assign it under
17 365, we won't, and we're certainly not going to infringe.

18 THE COURT: All right. You're satisfied with the
19 buyer's statement?

20 MR. HOGAN: I'm sorry, Your Honor, I couldn't hear
21 what the buyer said.

22 THE COURT: Please talk into the mike so he can hear
23 you.

24 MR. ZIMAN: I'm sorry, Your Honor. I am not aware --

25 MR. HOGAN: Is this Mr. Gross?

1 MR. ZIMAN: I'm sorry, sir, I'm not aware --

2 THE COURT: Raise it so he can actually hear you.

3 MR. ZIMAN: I'm not aware of this license being on
4 any list to be assumed and assigned as of the initial closing.
5 I don't have any facts regarding this license, and to the
6 extent that there's a 365C issue where we can't assume and
7 assign it, then the Court won't let us, and we're certainly not
8 going to use it an subject ourselves to infringement liability,
9 or if we do we are liable.

10 THE COURT: Did you hear that?

11 MR. HOGAN: I did, Your Honor, and I guess what I
12 conclude from it is -- we believe it is being used, Your Honor,
13 for the record. It has been used in the case, it has been used
14 -- and we believe that the software that was created when it's
15 properly litigated will be shown to be another derivative, the
16 one that they're going to assume and use.

17 THE COURT: Well, the buyer says they're not buying
18 it. To the extent they use it you'll have to sue them for
19 infringement.

20 MR. HOGAN; And that seems to be the way it's left,
21 Your Honor, as long as it's understood that it's not being
22 assigned in this sale.

23 THE COURT: I'm not giving any order assuming it,
24 assigning it by this sale order. To the extent they think they
25 can assume and assign it later, that issue will be teed up.

1 MR. HOGAN: Yes, Your Honor, and we believe that the
2 software they're buying is infringed software, so we will
3 pursue it. Thank you.

4 THE COURT: All right. Anybody?

5 MR. LIEBELER: Just to make sure and to make it
6 clear, we contend that we're not using it.

7 THE COURT: I heard you the first time. Any other
8 objector?

9 MR. RHODES: Good afternoon, Your Honor. Jeff Rhodes
10 on behalf of the Sandelman landlords, and as a procedural
11 matter, Your Honor, I have submitted today a motion to be
12 admitted pro hac vice to this court.

13 THE COURT: All right, that's fine.

14 MR. RHODES: Thank you. I have Mr. McCauley, my local
15 counsel, with me.

16 Your Honor, on behalf of the Sandelman landlord, who
17 are landlords that own properties, various properties across
18 the country to which one or more of the debtor was a party, we
19 filed an objection basically to cure claim issues.

20 Now, I understand that what the debtors are now
21 proposing to do is to bifurcate and deal with assumption and
22 assignment issues later.

23 THE COURT: Yes.

24 MR. RHODES: However, I'm concerned, under the text
25 of the proposed order that's being circulated that some rights

1 you.

2 MS. JONES: Your Honor, may I ask Your Honor a
3 mechanical question. With respect to the hearing on Thursday,
4 would Your Honor like us to submit an agenda?

5 THE COURT: No, that's not necessary.

6 MS. JONES: Thank you.

7 THE COURT: That's fine. I'll just keep what I have
8 here, but I'd ask parties to send everything to chambers so I'm
9 sure I get it.

10 MS. JONES: Thank you.

11 THE COURT: All right, we'll stand adjourned then.

12 (Recording ends)

13

*

*

*

14

C E R T I F I C A T I O N

15 I, Betsy Wolfe, certify that the foregoing is a
16 correct transcript from the electronic sound recording of the
17 proceedings in the above-entitled matter.

18

19

Betsy Wolfe

Aug. 11, 2003

20 Betsy Wolfe

Date

21 J&J COURT TRANSCRIBERS, INC.

22

23

24

25